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8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**
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11 ARIEL LEON,
12 Plaintiff(s),

Case No.: 2:18-cv-00992-APG-NJK

13 v.

ORDER

14 WYNN LAS VEGAS, LLC,
15 Defendant(s).

16 Plaintiff is proceeding in this action *pro se* and has requested authority pursuant to
17 28 U.S.C. § 1915 to proceed *in forma pauperis*. Docket No. 2. Plaintiff has also submitted a
18 complaint. Docket No. 2-2.

19 **I. *In Forma Pauperis* Application**

20 Plaintiff filed the affidavit required by § 1915(a). Docket No. 2. Plaintiff has shown an
21 inability to prepay fees and costs or give security for them. Accordingly, the request to proceed *in*
22 *forma pauperis* will be granted pursuant to 28 U.S.C. § 1915(a).

23 **II. Screening the Complaint**

24 **A. Standards**

25 Upon granting an application to proceed *in forma pauperis*, courts additionally screen the
26 complaint pursuant to § 1915(e). Federal courts are given the authority to dismiss a case if the
27 action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted,
28 or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

1 When a court dismisses a complaint under § 1915, the plaintiff should be given leave to amend the
2 complaint with directions as to curing its deficiencies, unless it is clear from the face of the
3 complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70
4 F.3d 1103, 1106 (9th Cir. 1995).

5 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint
6 for failure to state a claim upon which relief can be granted. Review under Rule 12(b)(6) is
7 essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of Am.*, 232 F.3d 719, 723
8 (9th Cir. 2000). A properly pled complaint must provide a short and plain statement of the claim
9 showing that the pleader is entitled to relief. Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp. v.*
10 *Twombly*, 550 U.S. 544, 555 (2007). Although Rule 8 does not require detailed factual allegations,
11 it demands “more than labels and conclusions” or a “formulaic recitation of the elements of a cause
12 of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Papasan v. Allain*, 478 U.S. 265,
13 286 (1986)). The court must accept as true all well-pled factual allegations contained in the
14 complaint, but the same requirement does not apply to legal conclusions. *Iqbal*, 556 U.S. at 679.
15 Mere recitals of the elements of a cause of action, supported only by conclusory allegations, do
16 not suffice. *Id.* at 678. Secondly, where the claims in the complaint have not crossed the line from
17 conceivable to plausible, the complaint should be dismissed. *Twombly*, 550 U.S. at 570.
18 Allegations of a *pro se* complaint are held to less stringent standards than formal pleadings drafted
19 by lawyers. *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (finding that liberal
20 construction of *pro se* pleadings is required after *Twombly* and *Iqbal*).

21 **B. Title VII Claims**

22 Plaintiff alleges that Defendant violated Title VII of the Civil Rights Act of 1964 (“Title
23 VII”), 42 U.S.C. § 2000e-5, and the Nevada anti-discrimination statute, NRS § 613.310, when he
24 was “treated disparately, subjected to hostile work environment, and subsequently retaliatorily
25 terminated.” Docket No. 2-2 at 2.

26 Before a plaintiff can file an action for an alleged violation of Title VII, he must file a
27 timely charge of discrimination with the Equal Employment Opportunity Commission within 300
28 days of the discriminatory act and then file suit within ninety days of receiving a right-to-sue letter.

1 42 U.S.C. § 2000e-5(e)(1) & (f)(1). “This ninety-day period is a statute of limitations.” *Nelmida*
2 *v. Shelly Eurocars, Inc.*, 112 F.3d 380, 383 (9th Cir.1997), *cert. denied*, 522 U.S. 858 (1997). Title
3 VII claims filed beyond the ninety-day period are subject to dismissal under Rule 12(b)(6). *See*
4 *e.g., Scholar v. Pac. Bell*, 963 F.2d 264, 266 (9th Cir. 1992); *see also Ortiz v. Washington County,*
5 *State of Oregon*, 88 F.3d 804, 807 (9th Cir. 1996) (“If the claimant does not file within this 90-day
6 period, the action is barred.”). Compliance with the 90–day filing requirement is a condition
7 precedent to filing in federal court, which acts like a statute of limitations. *See, e.g., Million v.*
8 *Frank*, 47 F.3d 385, 389 (10th Cir.1995).

9 Here, Plaintiff submits that he experienced intentional adverse disciplinary acts and
10 humiliating statements, was denied benefits, rights, and privileges afford to other employees, and
11 was retaliatorily terminated by Defendant because of his race, national origin, and disability.
12 Docket No. 2-2 at 6-11. Plaintiff submits that Defendant’s actions were willful and that Defendant
13 knew about the conduct of its employees, but failed to take corrective action. *Id.* at 6-8, 10.
14 Plaintiff submits that he first filed his Charge of Discrimination on June 30, 2014, was terminated
15 on December 20, 2015, and received Notice of Right to Sue Letter on April 14, 2016. *Id.* at 2; *see*
16 *also* Docket No. 2-3 at 4, 6, 10. Plaintiff filed his application to proceed *in forma pauperis* and
17 his complaint on June 1, 2018. Docket No. 2. Accordingly, Plaintiff received his right to sue letter
18 more than two years before he filed suit in this Court.

19 In light of the above, the complaint is hereby **DISMISSED** without prejudice.¹ Although
20 it appears unlikely that Plaintiff can overcome the above deficiency, the Court will permit him the
21 opportunity to amend the complaint if he believes he can do so.

22 **III. Conclusion**

23 Accordingly, **IT IS ORDERED** that:

- 24 1. Plaintiff’s request to proceed *in forma pauperis* is **GRANTED**. Plaintiff shall not be
25 required to pay the filing fee of four hundred dollars (\$400.00). Plaintiff is permitted
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27 ¹ In light of the deficiency outlined herein, the Court need not opine on whether other
28 deficiencies exist that may also prevent Plaintiff from pursuing his claims through the instant
lawsuit.

1 to maintain this action to conclusion without the necessity of prepayment of any
2 additional fees or costs or the giving of a security therefor. This order granting leave
3 to proceed *in forma pauperis* shall not extend to the issuance and/or service of
4 subpoenas at government expense.

- 5 2. The Clerk's Office is **INSTRUCTED** to file Plaintiff's complaint on the docket.
- 6 3. The complaint is **DISMISSED** with leave to amend. Plaintiff will have until **August**
7 **15, 2019**, to file an amended complaint to show that his case was timely filed. If
8 Plaintiff chooses to amend the complaint, Plaintiff is informed that the Court cannot
9 refer to a prior pleading (i.e., the original complaint) in order to make the amended
10 complaint complete. This is because, as a general rule, an amended complaint
11 supersedes the original complaint. Local Rule 15-1(a) requires that an amended
12 complaint be complete in itself without reference to any prior pleading. Once a plaintiff
13 files an amended complaint, the original complaint no longer serves any function in the
14 case. Therefore, in an amended complaint, as in an original complaint, each claim and
15 the involvement of each Defendant must be sufficiently alleged.
- 16 4. **Failure to comply with this order will result in the recommended dismissal of this**
17 **case.**

18 IT IS SO ORDERED.

19 Dated: July 18, 2019

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21 Nancy J. Koppe
22 United States Magistrate Judge
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